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K. L. Lee

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-202508.3

DATE: July 17, 1981

MATTER OF: Infinity Corporation

DIGEST:

1. Where protester's initial submission is without merit, GAO will render decision without obtaining report from agency.
2. Solicitation amendment which allows fourteen days for response to IFB provides sufficient time to allow bidders to prepare new or revised bids. Fact that bidder does not receive amendment until five days prior to bid opening does not entitle bidder to have its late bid considered.
3. Protest of agency refusal to consider bid, sent by regular mail and received after time set for receipt of bids, is denied where circumstances of late delivery do not fall within IFB's late bids clause exceptions.

Infinity Corporation (Infinity) protests the rejection of its untimely bid submitted in response to solicitation No. F08650-81-B-0040 issued by the Eastern Space and Missile Center, Patrick Air Force Base, Florida (Air Force).

Infinity contends that Air Force delay in mailing an amendment to the solicitation caused its bid to arrive late and that Infinity therefore should not be penalized by rejection of its bid. Further, Infinity argues that because the late bids clause in Defense Acquisition Regulation (DAR) § 7-2002.2 refers to the fifth day after mailing rather than the hour, bids which arrive on the specified day should be considered timely, without regard to the specified hour. Infinity

[Protest of Bid Rejection for Lateness]

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also criticizes the Air Force's failure to provide prompt notice of both the rejection of its bid and the entry of a protest against another, lower bidder. Finally, Infinity contends that the Air Force should not have opened its bid if it was late.

This case falls within the ambit of our decisions which holds that where it is clear from a protester's initial submission that the protest is without legal merit, we will decide the matter on the basis of the protester's initial submission without requesting a report from the procuring activity pursuant to our Bid Protest Procedures, 4 C.F.R. part 20 (1980). O.D.N. Productions, Inc., B-194312, April 13, 1979, 79-1 CPD 267.

Infinity's bid did not arrive at the office designated in the solicitation until 1:50 P.M., March 31, 1981, more than three hours after the specified bid opening time of 10:00 A.M. Infinity asserts that it received an amendment to the solicitation on March 26, 1981, and mailed it back to the Air Force that same day. Infinity therefore argues that there was Government delay in issuing the amendment which did not leave adequate time for reply.

The Air Force advises that the amendment in question was issued on March 17, 1981, which allowed fourteen days for transmittal, consideration and return. On its face, this amount of time appears reasonable and conforms with the requirement of DAR § 2-208 that amendments be issued in sufficient time to permit offerors to modify their bids. See Versatile Services, Inc.; Palmetto Enterprises, Inc., B-192819, February 26, 1979, 79-1 CPD 131. In any event, the onus is upon the bidder to comply with the bid opening time requirements of the solicitation. Aqua-Trol Corporation, B-196648, July 14, 1978, 78-2 CPD 41. Accordingly, Infinity must satisfy the requirements of the solicitation relating to the time of bid submission. If Infinity thought it had been provided inadequate time to return the amendment, it should have requested an extension of the bid opening date or protested the response time provided prior to bid opening.

Infinity also contends that DAR § 7-2002.2 does not require consideration of the exact hour or minute in determining whether a bid is late since only days are used to calculate the five day period for timely mailed bids. In this regard, the Air Force advises that Infinity's bid was sent by regular mail. The exception to the timeliness requirements of DAR § 7-2002.2 permitting acceptance of bids postmarked five days prior to bid opening is limited to registered and certified mail. Since Infinity elected not to use these methods of delivery, the five day period is not for application. Consequently, Infinity assumed the risk of late delivery. Geronimo Service Company, B-199864, October 28, 1980, 80-2 CPD 325. This risk includes satisfaction of the DAR § 2-302 requirement that bids be submitted "not later than the exact time set for opening of bids."

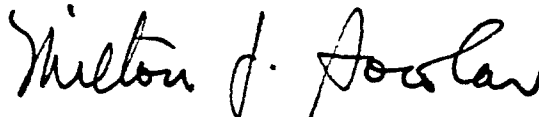
As to the contention that the Air Force should have furnished Infinity notice that its bid was untimely, DAR § 2-303.2 directs the contracting officer to promptly notify the bidders concerned when bids are received late. We therefore agree with Infinity that the Air Force's actions were deficient in this respect. Nevertheless, because the Air Force's rejection of Infinity's bid as untimely was otherwise proper, we do not believe that Infinity's interests were prejudiced by this failure.

As to Infinity's contention that it should have received a notice of a protest lodged against another, lower bidder, DAR § 2-407.8(a)(3) directs the contracting officer to notify other persons, including bidders "involved in or affected by the protest" of that event. The Air Force advises that it did not consider Infinity to be affected by the protest because its bid had been rejected as late. We see no reason to object to the Air Force's position.

Finally, Infinity contends that the Air Force should not have opened its untimely bid. We agree, since the pertinent regulation, DAR § 2-303.3, provides that late bids which are not considered for award shall be held unopened. However, the fact that its

late bid was mistakenly opened by the Air Force confers no additional rights upon Infinity. Gross Engineering Company--Reconsideration, B-193953, April 24, 1979, 79-1 CPD 285. Consequently, Infinity's bid remained untimely despite the improper opening.

The protest is summarily denied.

A handwritten signature in dark ink, reading "Milton J. Fowler". The signature is written in a cursive, flowing style with a large initial "M".

Acting Comptroller General
of the United States